

**STATEMENT FOR THE
SUBCOMMITTEE ON REGULATORY AFFAIRS
OF THE HOUSE
COMMITTEE ON GOVERNMENT REFORM**

ON

FRIDAY, SEPTEMBER 9, 2005

PRESENTED AT

FAIR HAVEN, MICHIGAN

PRESENTED BY

MS. KATHY J. METCALF

DIRECTOR, MARITIME AFFAIRS

CHAMBER OF SHIPPING OF AMERICA

Madame Chairman, we appreciate the opportunity to testify before you today on the subject of ballast water and the impact of invasive species.

The Chamber of Shipping of America is a maritime trade association composed of members which own, operate and/or charter large commercial vessels engaged in both the domestic and international trades. Our members operate a number of vessel types engaged in trade worldwide, including vessels trading to the Great Lakes.

While I am presenting this testimony today on behalf of my own organization, let me say that we are but one of a number of participants in the Shipping Industry Ballast Water Coalition (the "Coalition"). The Coalition is an informal organization of maritime trade associations and companies that own, operate or charter commercial vessels of all types engaged in both domestic and international trade and represents over 90% of the vessels calling in US ports. The types of vessels owned and operated by coalition members include oceangoing and coastwise containerships, tankers, roll-on/roll-off vessels, bulk carriers, and passenger vessels as well as tug/barge units which operate in oceangoing, coastwise and inland waters. While I am presenting this testimony today on behalf of my own organization due to time constraints inherent in clearing this testimony with the entire Coalition, the basis of this testimony is rooted in fundamental concepts espoused in the Coalition's testimony I presented at a June 15, 2005 invasive species management hearing convened by the Ocean Policy Subcommittee of the Senate Committee on Commerce, Science and Transportation and which is included at appendix to this statement.

The Coalition was formed over four years ago by a number of entities that believed resolution of this complex issue required the coordinated efforts of all stakeholders. Since that time, the Coalition has provided testimony or comments to both legislative and regulatory initiatives regarding ballast water management both at the international and domestic level.

GENERAL COMMENTS

While most understandable that this hearing today focuses on the invasive species challenges in the Great Lakes since it was this region that became one of the first documented victims of the significant damage which can be done by invasive species, I would like to broaden my testimony to address the absolutely critical need for a comprehensive national ballast water management strategy that will effectively address the invasive species issue associated with ballast water discharges, regardless of location. This need is based on the fundamental assumptions that (1) all of our precious marine ecosystems and resources need protection from this serious problem and (2) commercial shipping is an international business that requires international solutions to what is an international challenge. While it is an unfortunate fact that the wheels of international institutions may not turn as quickly as desired and thus admittedly the United States may not wish to wait for entry into force or accept an international solution, it is absolutely critical that a strong national program be crafted to ensure the appropriate level of environmental protection while at the same time providing regulatory certainty as to what is required of the thousands of vessels calling in US ports annually.

Almost twenty years ago, this issue was placed on the agenda of the International Maritime Organization (IMO). At the same time, concerns were beginning to be raised here in the United States relative to the impacts from invasive species being introduced via ballast water discharges. Since that time, IMO has concluded its ballast water treaty (February 2004), two federal statutes have been enacted (NISA 1990, NAISA 1996), numerous states have enacted their own programs, and significant resources have been directed to research and studies not only of the invasive species problem itself but also of possible solutions to the ballast water discharge component of the problem. And today, we have no less than five initiatives in Congress that have either resulted in or are intended to result in introduced legislation. Clearly, this issue has our attention and it is now time that we move forward to address this problem in a manner that protects our marine resources while at the same time continues to enable the efficient and economical transport of goods by water.

THE INDUSTRY'S POSITION

For almost ten years since the enactment of NAISA 1996, the industry has supported the creation of a mandatory national ballast water management program which initially allows for the use of ballast water exchange as well as other developing alternative management methods. While some vessels which carry relatively small quantities of ballast water can execute an exchange on a regular basis, many vessel types are unable to do so due to weather and/or stability issues which would jeopardize the safety of the ship and its crew and thus these alternative methods can provide an acceptable solution in this scenario. Additionally, the ecological effectiveness of exchange has been questioned for a variety of reasons and thus we, the industry, have been looking ahead to determine what technologies may be available to treat ballast water in an effective manner and thus eventually remove the need to exchange entirely from the regulatory framework once technology is developed to enable shipboard systems to meet the needed efficacy. The industry position has espoused four basis fundamental concepts since discussions on this issue started in the mid-1990s. First and as alluded to above, there is a need for a mandatory national ballast water program. Second, as part of this program, there is a need to create a ballast water management discharge standard that adequately reflects technological capabilities while yet providing the necessary incentives to improve the efficacy of these technologies over time. Third, a process needs to be created which will enable the creation of public-private partnerships which actually gets technologies onboard ships for real world testing – the so-called ballast water management testing and certification program. And finally, to enable a cohesive and comprehensive national program, the federal program must preempt individual states from creating their own programs which vary from the federal program and those created by their sister states. While I recognize that the issue of preemption is an emotional one anywhere but most especially at a field hearing, I would ask you to note that a number of state environmental agency representatives have publicly stated their desire for a strong federal program which would obviate the need for each state to divert precious human and financial resources to create their own programs.

I am happy to be able to say today, that but for the preemption issue, the IMO ballast water convention has, in fact, created international programs to address each of these issues. I am even happier to say today, that Senate Bill 363 as introduced by Senator Inouye and co-sponsored by Senators Akaka, Cantwell, Lautenberg, Sarbanes and

Stevens addresses each of these issues. While the industry still has some concerns with certain provisions of S 363, most specifically the ballast water performance standard, the bill as marked up and reported out of the Senate Commerce, Science and Transportation Committee on July 21, 2005 provides an excellent framework from which we can address these issues in a logical, environmentally and economically effective manner and yet compares favorably in most cases to the provisions of the IMO Convention which will thus facilitate the understanding and compliance of the global maritime fleet with US requirements. In addition, the provisions of this proposed legislation dovetail in a positive way with past, current and future initiatives of the US Coast Guard to implement the necessary regulations to move ballast water management from theory to real world application and implementation.

WHY A NATIONAL PROGRAM WHICH PREEMPTS STATE INITIATIVES?

Shipping is international and the regulation of shipping should be, too. While this is not always possible, the Coalition believes that regulation of shipping through international requirements as established by IMO is the correct way to comprehensively regulate the industry in a clear manner. However, there are cases where domestic legislation has been enacted which vary with international requirements. Not without some pain, the industry has adjusted to these US requirements. However, in the case of ballast water management, the industry has, over the past several years, been exposed to state requirements that, in some cases, have varied from the federal requirements. Continuing this patchwork-quilt approach would be catastrophic for the environment and the industry and undermine the progress that we can make on this issue by the establishment of a strong, uniform federal program

BALLAST WATER TREATMENT TECHNOLOGIES

Worldwide, technology developers and ship owners/operators are engaged in a search for ballast water treatment technologies that will address this problem. Most recently this July, the IMO Marine Environment Protection Committee concluded its first technology review as required by the ballast water convention and although not conclusive, determined that a number of promising technologies were being tested world-wide. These technologies include, among others, physical separation, heat, ultraviolet and a number of biocides which have the potential to provide effective “kill” results in the ballast water system but yet have sufficiently short residence times to prevent negative impacts on the environment when the treated ballast water is discharged. Even more germane to this hearing acknowledging the regional concerns associated with NOBOB (no ballast on board) vessels, these treatment systems would effectively eliminate the threat of invasive species introductions associated with suspended and collected sediments in ballast water tanks since the organisms would be treated either before they entered or while they were contained in the ballast water tanks. Relative to technology development, there is one thing which I can safely say that all would agree. There is no silver bullet that will provide the necessary efficacy on all ships on all voyages in all water bodies. It is for this reason that we need to move forward now with the experimental shipboard technology testing programs outlined in the IMO Convention and already in place here in the US via an existing US Coast Guard Navigation and Inspection Circular. It is simply not good enough that technologies work in a laboratory or even in a pilot stage test bed. We must get them on ships and tested in the real world

operating environment of commercial shipping, which will allow us to take into account the varied operating environments, marine ecosystems and ship characteristics i.e. ballast water capacities and flow rates. The Chamber is pleased to note that three of our member companies are currently engaged in shipboard testing of three different technologies on three different type vessels trading to three distinctly different regions, the West Coast of the United States, the Gulf Coast of the United States and the Great Lakes/Northern Europe. While not completed, all of these technologies are showing significant promise in achieving the performance standards as contained in the IMO Convention, but not the two orders of magnitude more stringent standard contained in S 363.

ESTABLISHMENT OF A NATIONAL DISCHARGE STANDARD

Probably the most confounding aspect of this entire issue is the question of what is the appropriate national discharge standard for ballast water effluent. It must obviously be environmentally protective, but equal as obvious, it must also be technologically achievable, lest we be left with a legal requirement that is impossible to meet. Compounding the difficulty even further is the fact that the science of invasion biology is not sufficiently mature, at least from what I, a simple mariner, have been told by invasion biologists, to accurately predict which organisms in which concentrations will be a threat to a particular marine ecosystem and which ones will not. This conundrum has been wrestled with by scientists and policy makers worldwide with no certain answers identified. Thus, the IMO convention represents the world's consensus (although not the US's) of a good "starting" point which will significantly reduce the existing risk and establish a reasonable hard target to which shipowners and technology developers may aim. A number of discussions here in the US have debated the need for a "hard" numerical standard versus the creation of a Best Available Technology program by which the numerical standard would be established after a number of technology test results have been compiled. The industry strongly advocates for the creation of a "hard" numerical standard for one simple reason. The cost to install a prototype treatment system onboard a vessel and conduct the necessary scientifically valid tests has in the past and is expected in the future to reach or exceed one million US dollars. Without the existence of a numerical standard, this very expensive effort can be compared to a shot in a dark room with no target by someone with their eyes closed. Establishment of a numerical standard enables technology vendors to test out their prototype systems ashore and present the results to "sell" their system to a ship owner or operator which will then be more inclined to commit to a partnership with the technology developer to conduct the costly but necessary shipboard tests.

ENACTED BALLAST WATER LEGISLATION MUST BE THE EXCLUSIVE FEDERAL PROGRAM WHICH REGULATES BALLAST WATER MANAGEMENT AND DISCHARGES IN US WATERS

The industry strongly believes that enacted ballast water legislation should be the exclusive federal program which regulates ballast water management and discharges in US waters. As a result of a recent US District Court decision, there is some question as to whether Congress intended to include ballast water discharges under provisions of the Clean Water Act and specifically the National Pollutant Discharge Elimination System permitting program. The industry strongly supports congressional action to clear up this confusion and recommends the inclusion of appropriate text in any legislative initiative to

clearly manifest Congress's intent to regulate ballast water management under the provisions of ballast water specific legislation.

In conclusion, this is obviously not an easy problem to solve. But we, the industry believe that reasonable and environmentally protective solutions are within reach to significantly reduce the risk of aquatic invasive species invasions associated with ballast water discharges.

We appreciate the opportunity to provide testimony to your subcommittee and would be pleased to answer any questions you may have.

APPENDIX

**STATEMENT FOR
THE OCEAN POLICY STUDY SUBCOMMITTEE
OF THE
SENATE COMMITTEE ON COMMERCE, SCIENCE
AND TRANSPORTATION**

ON

WEDNESDAY, JUNE 15, 2005

AT

9:30 A.M. IN SR-253

PREPARED BY

**MS. KATHY J. METCALF
DIRECTOR, MARITIME AFFAIRS
CHAMBER OF SHIPPING OF AMERICA**

**ON BEHALF OF THE SHIPPING INDUSTRY BALLAST
WATER COALITION**

Mr. Chairman, we appreciate the opportunity to testify before you today on the subject of invasive species management and specifically the provisions of Senate Bill 363, the Ballast Water Management Act of 2005 as introduced by Senator Inouye on behalf of himself and Senators Akaka, Cantwell, Lautenberg, Sarbanes and Stevens.

The Shipping Industry Ballast Water Coalition (the “Coalition”) is an informal organization of maritime trade associations and companies that own, operate or charter commercial vessels of all types engaged in both domestic and international trade and represents over 90% of the vessels calling in US ports. The types of vessels owned and operated by coalition members include oceangoing and coastwise containerships, tankers, roll-on/roll-off vessels, bulk carriers, and passenger vessels as well as tug/barge units which operate in oceangoing, coastwise and inland waters. While the testimony we provide today highlights points of agreement by the vast majority of the Coalition, individual members of the coalition would respectfully reserve their right to provide written comments to this record to provide additional information as they deem necessary.

The Coalition was formed over four years ago by a number of entities that believed resolution of this complex issue required the coordinated efforts of all stakeholders. Since that time, the Coalition has provided testimony or comments to both legislative and regulatory initiatives regarding ballast water management both at the international and domestic level.

GENERAL COMMENTS

The Coalition congratulates Senator Inouye and his colleagues for drafting the proposed legislation as it is, to date, the legislation which most closely mirrors the management structure as contained in the recently agreed upon International Convention for the Control and Management of Ships’ Ballast Water and Sediments, 2004 (“the IMO Convention”) by the member states of the International Maritime Organization. The Coalition has always and continues to support the prompt enactment of domestic legislation which will establish a national ballast water management program and that reflects, to the maximum extent possible, the substantive provisions and regulatory framework of the IMO Convention. In this regard, the Coalition supports the provisions of S 363 with a few specific changes as noted below.

THE BALLAST WATER MANAGEMENT PERFORMANCE STANDARD

The Coalition supports changing the performance standard as currently included in S 363 to reflect the standard contained in the IMO Convention. As currently drafted, S 363 contains a performance standard that is one hundred times more stringent than that contained in the IMO Convention. It is important to note that at this point in time, there is no published peer-reviewed data that suggests the existence of technology which can achieve the IMO standard, although we are hopeful that this technology will emerge from testing programs which are underway around the world and on a variety of ships. It is this data, once published and peer-reviewed, that will become part of the pre-review process conducted at IMO, and under the pre-review process as contained in S 363 as introduced. What is critical here is that the first standard be achievable, recognizing

future adjustment of the standard during the periodic review process which will reflect the capabilities of emerging technology to provide even more efficient treatment results.

The Coalition also strongly supports including a quantitative performance standard in the legislation itself and not leaving the establishment of the performance standard to the regulatory process. For a number of years, members of our coalition have had discussions with technology developers and reviewed various ballast water treatment technologies. I can unequivocally state that it was only when the fixed quantitative standard was established by IMO, that shipowners and technology developers alike were in a position to commit vast sums of financial and human resources to finding a solution to this perplexing problem. Once this quantitative standard was established, shipowners and technology developers alike had a “hard target” at which to aim. While the concept of “best available technology” is a viable one, it has no place in establishing initial performance standards for ballast water treatment systems. It will more appropriately, by default, become the general criteria for later adjustments of the standard to reflect developing technology.

REVIEW OF STANDARDS AND FEASIBILITY REVIEW

Section 3(f) of S 363, entitled Ballast Water Treatment Requirements, contains provisions for a periodic review of standards (3(f)(4)) and an initial feasibility review (3(f)(6)). These are key provisions in ensuring that appropriate technologies are available to achieve the initial standard and provide for periodic reviews of the established standard in light of new technologies that provide even more effective treatment results. While the Coalition strongly supports inclusion of both of these provisions, we believe that more detail is necessary in the legislation to guide the regulatory program which will implement these provisions. Specifically, the Coalition believes that the legislation should explicitly include five specific criteria on which these reviews will be based. The five criteria are considerations of safety, environmental acceptability, practicability, cost effectiveness and biological effectiveness. By including these specific criteria, Congress will more clearly outline the charge to the agencies which will be responsible for implementing these review programs.

URGENT NEED FOR A COORINDATED FEDERAL PROGRM WHICH MAY BE IMPLEMENTED BY THE STATES

Shipping is international and the regulation of shipping should be, too. While this is not always possible, the Coalition believes that regulation of shipping through international requirements as established by IMO is the correct way to comprehensively regulate the industry in a clear manner. However, there are cases where domestic legislation has been enacted which varies with international requirements. Not without some pain, the industry has adjusted to these US requirements. However, in the case of ballast water management, the industry has, over the past several years, been exposed to state requirements that, in some cases, have varied from the federal requirements. We fear this trend will continue without the inclusion of appropriate language in S 363. Continuing this patchwork-quilt approach would be catastrophic for the environment and the industry and undermine the progress that we can make on this issue by the establishment of a strong, uniform federal program. Therefore, the Coalition strongly advocates the modification of the current preemption language found at Section 3(q) to reflect the

recognition that the program as established under this legislation is the sole program established in the United States for the management and control of ballast water discharges. With the implementation of this strong federal program, there should be no need for state, regional or local implementation of additional or conflicting ballast water management requirements and thus the inclusion of strong preemption language is appropriate.

S 363 AS THE EXCLUSIVE FEDERAL PROGRAM WHICH REGULATES BALLAST WATER MANAGEMENT AND DISCHARGES IN US WATERS

The Coalition strongly believes that enacted ballast water legislation should be the exclusive federal program which regulates ballast water management and discharges in US waters. As a result of a recent US District Court decision, there is some question as to whether Congress intended to include ballast water discharges under provisions of the Clean Water Act and specifically the National Pollutant Discharge Elimination System permitting program. The coalition strongly supports congressional action to clear up this confusion and recommends the inclusion of appropriate text to clearly manifest Congress's intent to regulate ballast water management under the provisions of ballast water-specific legislation such as S 363.

NEED FOR A SPECIFIC EXEMPTION FROM BALLAST WATER EXCHANGE REQUIREMENTS FOR TUG/BARGE OPERATIONS

A vast majority of the Coalition believes that an express provision should be included in S 363 which exempts tug and barge operations from the ballast water exchange requirements. The basis for this specific exemption relates to the inherently unsafe nature of maneuvering a tug alongside a barge and then place a human life at risk by requiring a crew member to scale what is essentially a 20 to 30 foot vertical steel wall, in order to allow exchange to be conducted on the barge at sea. While the existing safety exemption would arguably cover such an operation, it would be more appropriate to clearly manifest the intent of Congress that such an operation would not be condoned by including specific language exempting tug/barge operations from the ballast water exchange requirements. In fact, Washington and Oregon have exempted tug and barge operations from state requirements to conduct ballast water exchange. These states have acknowledged the inherent risks in requiring barges to conduct ballast water exchange. It is important to note that this exemption would not apply to the integration of ballast water treatment systems as they become available, provided that the system would enable treatment of ballast while the vessel was berthed and thus obviate the need to conduct an unsafe operation at sea.

We appreciate the opportunity to provide testimony to your subcommittee and would be please to answer any questions you may have.